

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comment Sought on Universal Service	)	<b>WC Docket No. 06-122</b>
Administrative Company's Request For	)	
Universal Service Fund Policy Guidance	)	<b>CC Docket No. 96-45</b>
	)	

**REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS**

Level 3 Communications, LLC ("Level 3") files these reply comments in response to the Federal Communications Commission's ("Commission") Public Notice seeking comment on a letter filed by the Universal Service Administrative Company ("USAC") seeking Commission guidance regarding situations in which a carrier-contributor attempts to provide confirmatory certifications for its resellers after a finding by USAC that the contributor does not have appropriate documentation to justify its reseller classifications.<sup>1</sup> Level 3 agrees with commenters who argue that the Commission should find that a carrier contributor's use of a confirmatory reseller certification satisfies the Commission's rules.<sup>2</sup> This is particularly true where a contributor can demonstrate that it has an annual certification process in place that complies with

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<sup>1</sup> See *Comment Sought on Universal Service Administrative Company's Request For Universal Service Fund Policy Guidance*, Public Notice, WC Docket No. 06-122; CC Docket No. 96-45 (rel. Mar. 7, 2011).

<sup>2</sup> See Comments of Verizon and Verizon Wireless, WC Docket No. 06-122; CC Docket No. 96-45 ("Verizon Comments"); Comments of XO Communications Services, Inc., WC Docket No. 06-122; CC Docket No. 96-45 ("XO Comments"); Comments of TelePacific Communications, WC Docket No. 06-122; CC Docket No. 96-45 ("TelePacific Comments").

the Commission's rules.<sup>3</sup> In certain circumstances, a carrier may not be able to demonstrate that it attempted to ascertain a reseller's status during the contribution year and/or before the Form 499-A for that year was filed, and therefore must rely on a confirmatory certification to prove a reseller's exempt status. Finally, Level 3 agrees with parties who argue that ultimately, the timing of a reseller certification is largely irrelevant to whether a reseller makes independent contributions to the Universal Service Fund ("USF").<sup>4</sup>

## **DISCUSSION**

Level 3 agrees with commenters who argue that despite a carrier's vigorous efforts to maintain internal procedures that are compliant with the Commission's rules and precedent,<sup>5</sup> such systems are not foolproof.<sup>6</sup> Administrative oversight, system errors and the sheer volume of certifications many carrier-contributors are responsible for processing and maintaining annually, unfortunately leave room for instances where a confirmatory reseller certification must be relied upon. For instance, Level 3 handles thousands of reseller certifications on an annual basis. While it has put forth every effort to maintain an error-free certification process, Level 3 may not always be certain that in some cases it would not be forced to rely on a confirmatory certification.

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<sup>3</sup> Letter from Richard A. Belden, Chief Operating Officer, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 06-122, CC Docket No. 96-45 (filed Mar. 1, 2011) ("USAC Letter") at 2, discussing Commission precedent regarding the "reasonable expectation" requirement.

<sup>4</sup> See Verizon comments at 2.

<sup>5</sup> See USAC Letter at 2.

<sup>6</sup> See Verizon Comments at 3.

Ultimately, Level 3 agrees with parties who argue that because assessable revenues are not impacted by a carrier-contributor's use of a *valid* confirmatory reseller certification, it should not concern USAC if a carrier-contributor relies upon one.<sup>7</sup> Level 3 also agrees that confirmatory certifications do nothing to alter whether the reseller actually contributed to the USF.<sup>8</sup> As noted by XO Communications, a reseller that did not actually contribute<sup>9</sup> could not validly sign such a certification.<sup>10</sup> Furthermore, if USAC determines that confirmatory certifications are unacceptable as a matter of course and reclassifies all revenue subject to the confirmatory certification as end user revenue, USAC would double-collect on certain USF eligible revenues.<sup>11</sup> Such a result is untenable and does not further the goals of the USF.

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<sup>7</sup> See Verizon Comments at 2; XO Comments at 19.

<sup>8</sup> See XO Comments at 19.

<sup>9</sup> If a wholesale carrier meets the reasonable expectation standard through a timely reseller certification or other reliable evidence, such as a confirmatory reseller certification, USAC should pursue any such discrepancy in revenues reported by the reseller with the reseller, not the wholesale carrier.

<sup>10</sup> See XO Comments at 19.

<sup>11</sup> See XO Comments at 19. As noted by XO Communications, the ultimate question in this proceeding becomes whether USAC should knowingly double collect payments on the same revenues by ignoring or disallowing confirmatory certifications. See XO Comments at i.

## CONCLUSION

For the reasons discussed above, Level 3 requests that the Commission confirm that confirmatory reseller certifications are fully consistent with its current rules.

Respectfully submitted,

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